

**MINUTES OF THE
JUDICIARY INTERIM COMMITTEE**

Wednesday, April 24, 2002 – 9:00 a.m. – Room 403 State Capitol

Members Present:

Sen. David L. Gladwell, Senate Chair
Rep. Glenn L. Way, House Chair
Sen. D. Edgar Allen
Sen. Millie M. Peterson
Sen. Michael G. Waddoups
Rep. Patrice M. Arent
Rep. Chad E. Bennion
Rep. Ron Bigelow
Rep. Katherine M. Bryson
Rep. Scott Daniels
Rep. James A. Ferrin
Rep. Ben C. Ferry
Rep. Neal B. Hendrickson

Rep. Eric Hutchings
Rep. Mike Thompson
Rep. A. Lamont Tyler
Rep. David Ure

Members Absent:

Sen. Terry R. Spencer
Rep. Greg J. Curtis

Staff Present:

Mr. Jerry D. Howe, Research Analyst
Ms. Esther D. Chelsea-McCarty, Associate General Counsel
Ms. Glenda S. Whitney, Legislative Secretary

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the Committee secretary, Glenda Whitney, at 538-1032.

1. Call to Order and Committee Business

Chair Gladwell called the meeting to order at 9:21 a.m.

MOTION: Rep. Bennion moved to approve the minutes of the January 15 and 17, 2002 meetings. The motion passed unanimously, with Rep. Daniels and Rep. Ure absent for the vote.

2. Sunset Review: The Office of the Court Administrator

Chair Gladwell reminded the committee that it had recommended that the sunset date on both the AOC (Administrative Office of the Court) and the Alternative Dispute Resolution Act be repealed. H.B. 47 was drafted to implement the committee's recommendation and the bill was submitted to the Legislature during the 2002 General Session. He explained that the Legislature raised some concerns with repealing the sunset dates and requested that the Judiciary Committee further review the AOC and Alternative Dispute Resolution Act in greater detail.

Mr. Howe explained to the committee that a performance audit of the AOC had been completed in June of 1991 in which the Legislative Auditor had concluded that the AOC provides a valuable public service and should be reauthorized.

Mr. Dan Becker, Administrative Office of the Courts, distributed two handouts "Sample of Relevant Constitutional and Statutory Provisions," and "Workforce and Budget of the Administrative Office of the Courts." He reviewed the functions of the AOC, addressed the growth that has occurred, and explained the budget. Because the Legislature reauthorized the AOC in 1992, he used that year as the base year

from which to talk about growth until 2002. He reviewed from the handouts the statutory provisions and responsibilities.

The committee expressed concern with the size and growth of the Court Administrator's Office and how the office establishes funding priorities for educational courses for all judges and employees while several district court judges do not have law clerk assistance.

Chair Gladwell welcomed Chief Justice Durham and congratulated her on her new position.

Chief Justice Christine M. Durham, Utah Supreme Court, said this is her first opportunity as Chief Justice to interact with Legislators on matters affecting the courts. She expressed appreciation for the work of the Legislature and acknowledged the long-standing tradition of cooperation and mutual respect between the Judiciary and Legislature and meeting the needs of the people in this state.

Chief Justice Durham explained that when she was first appointed to the bench in 1978, the Judiciary had little, if any, control over the management of the courts except for what actually happened in the court room. As a result, there were no audits, no legal counsel, no human resources, and the Judiciary was dependent on the counties for a large degree of their funding. She explained the importance of professional education for judges and all other court personnel, who have such an immediate impact on the lives of the people who come before the courts.

Chief Justice Durham noted the dramatic change that has occurred over the course of the past fifteen years, since the rewrite of the Judicial Article, including the creation of the Judicial Council, and a system of statewide governance for the state courts. She said it is healthy to discuss state of the Judiciary and emphasized her constitutional role as Chief Justice to be the Chief Administrative Officer of the Judiciary. She explained the role of the Judiciary, Judicial Council, and the several Boards of Judges which advise the Judicial Council on different matters.

Judge K.L. McIff, Chair, District Court Board of Judges, explained that judges are appointed for their legal expertise and knowledge of the law, general experiences and exposure in life, as well as the quality of their judgement. He indicated that judges are neither appointed nor paid as administrators. He noted that all fundamental policy decisions made by the Judiciary are made by judges. Judge McIff explained that the boards make recommendations to the Judicial Council which is responsible for the ultimate decisions regarding the administration. Judge McIff spoke in support of the AOC, explaining that the support services provided by the AOC is invaluable.

Judge Robert Yeates, Chair, Juvenile Court Board of Judges, indicated that there are several issues that confront his court and explained that he does not have the time to do the research and gather the information for issues. He said that in order to get that information, he depends on the AOC to do the research and provide the data so that he can make informed judgements from that data. Judge Yeates said Juvenile Court Judges value and need the services of the AOC.

Judge John Sandberg, Chair, Justice Court Board of Judges, explained that the AOC functions effectively with the Judicial Council and the different Boards of Judges. This relationship is helpful to the Judiciary, he said, because it is important for local courts to draw from consistent, professional advice which is provided by the AOC.

MOTION: Sen. Waddoups moved to recommend that the July 1991, Legislative Performance Audit of the Administration of the Courts be updated by the Legislative Auditor and that all legislators be asked to explain their concerns with the AOC to the chairs of this committee so that all legislator concerns may be addressed in the audit. The motion passed unanimously, with Rep. Way, Rep. Bryson, Rep. Daniels, Rep. Thompson, and Rep. Ure absent for the vote.

3. Sunset Review: Alternative Dispute Resolution Act

Mr. Michael Zimmerman, Former Chief Justice of the Utah Supreme Court, explained the background of the Alternative Dispute Resolution Act (ADR) and presented an overview on the value of the program. Traditional litigation is very expensive, decisions are final, and made by people who have, in many cases, limited technical experience in the area of the dispute. The mediation process has been a way to produce a settlement in a timely manner, where the parties have a say in the solution, and are not bound by procedures and court rules. Mr. Zimmerman explained in detail the ADR process and its benefits.

Sen. John Valentine explained that as the sponsor of the Alternative Resolution Act, he too is convinced of the importance and value of an ADR program. He expressed concern, however, that court recognized ADR providers are subject to certain court rules which, he said, seem to eliminate qualified mediators. Of primary concern, however, is that the Legislature seems to have given the Judiciary a blank check with respect to providing for ADR because the Legislature has forgotten to provide for the rules under which is ADR is to be governed. This has allowed the Court through its rulemaking process to establish its own rules with respect to ADR. Some of those rules, he said, have made ADR more mandatory to parties, rather than voluntary. He recommended that the sunset date be extended for five-years so that the program may be evaluated again at that time.

Mr. Schwermer noted that although rules allow mediators to be dropped from the ADR roster, none have actually been dropped because they have not been able to meet the requirements for the mediation program. He explained that the AOC reports to the Judiciary Interim Committee annually on each of the mediation programs and would be willing to include a greater discussion of the rules in the future. He also noted that the Judicial Rules Review Committee has reviewed all of the rules as they have been promulgated.

Mr. Kent Scott, Chair, ADR Section of the Utah State Bar, said the ADR roster is a good service to lawyers and a needed resource.

After discussion, the committee made the following motion.

MOTION: Sen. Waddoups moved to place a July 1, 2008 sunset on the Alternative Dispute Resolution Act. The motion passed unanimously, with Sen. Allen, Rep. Way, Rep. Bennion, Rep. Bigelow, Rep. Bryson, Rep. Daniels, Rep. Ferry, and Rep. Ure absent for the vote.

4. Judicial Conduct Commission

Chair Gladwell said this agenda item will be discussed at a future meeting.

5. Uniform Trust Act

Mr. Mark Morrise, Officer in the Estate Planning Section of the Utah State Bar, said the Uniform Trust Act is a proposed law that has been created by the Uniform Commission on State Laws. He presented an overview of the act and noted that a group of lawyers is being established to study the uniform provisions as well making a comparison with Alaska's statute, which has some support by some Utah practitioners.

Chair Gladwell questioned whether Mr. Morrise could report back to the Judiciary Interim Committee at its October meeting with a comparison of the Uniform Trust Act provisions to current Utah law with an explanation of what is appealing about Alaska's statute.

Mr. Morrise said that would be possible.

6. Establish Study Priorities

Chair Gladwell referred to the Judiciary Interim Committee mailing packet and the ballot "Judiciary Interim Committee Prioritization Ballot, April 2002" and requested that committee members prioritize up to six items. He explained that the balloting will be used to assist the chairs in establishing future meeting agendas.

Chair Gladwell noted that the Legislative Management Committee suggested adding two items to the study list: 1) Divorce, Custody, and Visitation; and 2) Sunset of Unauthorized Practice of Law.

Chair Gladwell and sponsors of the items on the Master Study Resolution were asked to explain the issues. The committee reviewed the items and discussed whether each item should be studied by the committee.

7. Preview of Reports Required to be Heard by the Judiciary Interim Committee

Chair Gladwell referred to the Judiciary Interim Committee mailing packet and the chart "Statutory Reports to Judiciary Committee 2002 Interim." He explained that these statutory reports should be reported on during the Interim. He noted that all entities required to report to the Judiciary Interim Committee should, if practical, provide executive summaries of the reports to the Judiciary Interim Committee as soon as practical.

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8. Adjournment

MOTION: Sen. Peterson moved to adjourn the meeting. The motion passed unanimously, with Rep. Way, Rep. Bennion, Rep. Bigelow, Rep. Daniels, Rep. Tyler, and Rep. Ure absent for the vote. Chair Gladwell adjourned the meeting at 12:00 p.m.